

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LEIGH M. OLSEN,) HABEAS CORPUS ACTION
PETITIONER,) NO. 04-40178-FDS
VS.) OCTOBER 12, 2004
STEVEN O'BRIEN, et al.,) TUESDAY
RESPONDENTS,)

PETITIONER'S MOTION TO VACATE ITS
"MEMORANDUM AND ORDER" DATED
OCT. 6, 2004 VOID FOR WANT
OF THE SEAL OF THE COURT
AND DISTORTED OPINIONS

Now comes LEIGH M. OLSEN, the Petitioner, and challenges the Court's **FATALLY DEFECTIVE**:

"MEMORANDUM AND ORDER"

"ORDER OF DISMISSAL"

received by the Petitioner on OCTOBER 8, 2004 via U.S.MAIL
DELIVER.

Petitioner claims that the CLERK OF COURT (TONY ANASTAS) and his DEPUTY CLERK (MARTIN CASTLES) executed the "PROCESS" WITHOUT AUTHENTICATION by AFFIXING THE COURT'S SEAL OF THE [F]EDERAL [S]OVEREIGNTY OF THE U.S.DISTRICT COURT, as is MANDATORY BY THE ACTS OF THE U.S.CONGRESS:

TITLE 1 USCS §114

TITLE 28 USCS §1691

The Petitioner, being held in FALSE IMPRISONMENT under STATE CUSTODY, cannot be served with [UN]AUTHENTICATED [F]EDERAL [S]OVEREIGNTY PROCESS (COURT ORDER) being in

fact a process which is "A VOID (PROCESS) FROM ITS INCEPTION A LEGAL NULLITY . . . THE COURT'S ACTION AMOUNTS TO A PLAIN USURPATION OF (its) POWER, CONSTITUTION A VIOLATION OF DUE PROCESS." U.S. v. BOCH OLDSMOBILE, INC. 909 F.2d 657 (1st Cir.1990) @661.

The presiding Court is duty-bound to examine the actions of the Clerk and his Deputy Clerks of Court to [P]ERFORM THEIR STATUTORY DUTIES (TITLE 1,USCS §114; TITLE 28 USCS §1691; RULE 44a1 F.R.Civ.P.).

Therefore, the Petitioner claims that this HABEAS CORPUS (F)EDERAL DISTRICT COURT has failed to treat his (EXHAUSTED) habeas corpus petition EXPEDITIOUSLY as the [F]ederal [C]onstitution MANDATES, especially when this Petitioner has presented [F]EDERAL [C]ONSTITUTIONAL VIOLATIONS AGAINST HIS "LIBERTY" INTEREST by State officials acting in contempt of the [F]EDERAL [L]AWS.

PETITION STATED HIS FEDERAL
[F]EDERAL AUTHORITIES OF LAWS TO
[S]TATE AND [F]EDERAL COURTS MEETING
HIS FEDERAL QUESTION/VIOLATION

Petitioner claims that his FEDERAL PETITION FOR WRIT OF HABEAS CORPUS [P]RESENTED AND CITED, WITH CLARITY THE [F]EDERAL [A]UTHORITIES OF LAWS, TO THE STATE HIGHEST COURT as follows: (EXHAUSTED STATE REMEDIES VIA FED.AUTHORITIES)

PAGE 2 FEDERAL SUPREMACY CLAUSE U.S.CONST.
ART.6,cl.2 &3

FEDERAL HAB.CORPUS,ART.1,§9,CL.2

Continued: ([P]resented & cited, [F]ederal [A]uthorities of laws)

PAGE 2 TITLE 1, §114; TITLE 28 USCS §1691

PAGE 3 TITLE 28 USCS §1738

PAGE 4 PREISER v. RODRIGUEZ
411 US 475, 500, 36 L.Ed.2d 439, 93 S.Ct.1827
(1973)

PAGE 5(a) WILLIAM v. HOLBROOK 691 F.2d 15 (1982)
PAGE 5(b)

PAGE 7 6TH & 14TH AMENDMENTS U.S.CONSTITUTION

PAGE 8 UNITED STATES v. ADDONIZIO
442 US 178, 60 L.Ed.2d 805, 99 S.Ct.2235

PAGE 9 FETTERLY v. PASKETT
997 F.2d at 1300

HERNANDEZ v. YLST
930 F.2d 714 (9TH CIR.1991)

PAGE 10 BARKER v. WINGO
92 S.Ct.2182 (1972)

PAGE 11 MOORE v. ARIZONA
94 S.Ct.188 (1973)

PAGE 12 UNITED STATES v. MARION
92 S.Ct. 455 (1971)

PAGE 13 DICKEY v. FLORIDA
90 S.Ct 1564 (1970)

PAGE 15 UNITED STATES CONSTITUTION
ARTICLE 6, CLAUSES 2 & 3 (FEDERAL SUPREMACY)

TITLE 28 USCS §1738

PAGE 19 AVERY v. KANE GAS LIGHT AND HEATING CO.
403 F.SUPP. 14 (1975)

PAGE 20 CELANESE CORP. OF AMERICA v. VANDALIA WARE-
HOUSE CORP.
424 FED.2d 1176 at 1180

PAGE 24 NOEL v. TOWN OF PLYMOUTH, MASS.
895 F.SUPP.346 (D.MASS.1995)

EXHIBITS:

PAGE 11 AETNA INS.CO. v. DOE EX DEM.HALLOCK
6 WALL 556, 18 L.Ed.948
U.S.SUPREME COURT DECISION

Petitioner claims that WITHIN THE FOUR CORNERS OF HIS PETITION FOR (FEDERAL) WRIT OF HABEAS CORPUS AD SUBJICIENDUM AGAINST FALSE IMPRISONMENT IN STATE PRISON, that he has met the prerequisites of stating MERITORIOUS CLAIMS and that he HAS EXHAUSTED HIS 'STATE' REMEDIES, by first filing his [I]DENTICAL HABEAS CORPUS CLAIMS, before the WORCESTER COUNTY SUPERIOR COURT, and the MASSACHUSETTS SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK, wherein, in each court the Petitioner WAS NOT accorded his 4th, 5th, 14th U.S. CONSTITUTIONAL AMENDMENTS rights and guarantees.

Petitioner claims that he has MET THE RIGHT TO HAVE THIS FEDERAL COURT TO ISSUE A SHOW CAUSE ORDER UPON THE RESPONDENT, STATE PRISON SUPERINTENDENT, AND SAID "ORDER" EXECUTED IN THE SOVEREIGNTY OF THE FEDERAL GOVERNMENT, COMMANDING A STATE OFFICIAL, WHO IS IN SERVICE OF THE STATE GOVERNMENT, TO BE AFFIXED WITH THE FEDERAL SEAL OF COURT AS MANDATED BY (TITLE 28 USCS §1691). (see ATTACHED EXHIBIT)

THE ERRONEOUS U.S.DISTRICT COURT'S
MEMORANDUM AND ORDER, "DISCUSSION"
(ERRONEOUS STATEMENT THAT SUMMARY
DISMISSAL) IS APPROPRIATE AND
VIOLATION OF FEDERAL LAWS
PURPORTEDLY NO ISSUE

The Honorable F.DENNIS SAYLOR IV, United States District Judge, appears to be standing in a pool of JUDICIAL BIAS (TITLE 28 USCS §144), when he has compelled this Petitioner to pay a DOUBLE-FILING-FEE (at \$5.00 9/15/Q4)

and again on (9/28/04), and although the FEDERAL LAW holds that the judge is obligated, BY STATUTE (28 USCS §2243) to ISSUE THE WRIT, or in the alternative, ISSUE A SHOW CAUSE ORDER TO THE RESPONDENT(S) STATE PRISON OFFICIALS.

Judge SAYLOR IV, intentionally delayed from the date of SEPTEMBER 15, 2004 until OCTOBER 6th, 2004, A PASSING OF [22] DAYS, in contempt of the Petitioner's 4TH, 5TH and 14TH FEDERAL CONSTITUTIONAL AMENDMENT(S) RIGHTS, and definitely IN CONTEMPT OF THE U.S. CONGRESSIONAL STATUTORY LAW GOVERNING HABEAS CORPUS ; TITLE 28 USCS §2243.

CLEBURNE v. CLEBURNE LIVING CTR., INC., 473 U.S. 432, 439 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).

Judge SAYLOR IV seeing clear evidence of the facts and documentary proof, that the Petitioner has presented to the [S]TATE'S HIGHEST COURT (SJC), [h]is IDENTICAL HABEAS CORPUS CLAIMS, AND THE U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT ruled that:

"PETITIONER CORRECTLY ARGUES THE LAW OF EXHAUSTION REQUIRES ONLY THAT (HIS) [F]EDERAL [C]LAIMS BE [FIRST] PRESENTED TO THE [S]TATE COURTS. . . (HE) NEED NOT DEMONSTRATED THAT THOSE COURTS EITHER ADDRESSED OR DECIDED THEM.
SMITH v. DIGMON, 434 U.S. 332 (1978)."

READ page 5b in the Petition, citing WILLIAM v. HOLBROOK, 691 F.2d 15 (1982), stands as [t]he BAR AGAINST THE UNCONSTITUTIONAL/ILLEGAL "SUMMARY JUDGMENT" and "MEMORANDUM AND ORDER" on the 6th day of OCTOBER, 2004,

which is INUNDATED WITH INAPPOSITE AUTHORITIES OF CASE LAWS AND CITATIONS FOR "(PROCEEDINGS IN FORMA PAUPERIS)" and WRONGFUL APPLICATION and judicial obstruction of access to the BENEFITS OF THE "GREAT WRIT" GUARANTEED BY THE U.S.CONSTITUTION, after the manifestation of EXHAUSTING HIS [F]EDERAL HABEAS CORPUS CLAIMS IN HIS (S)TATE HIGHEST COURT, WITHOUT JUDICIAL COGNIZANCE IN [T]HAT COURT.

The UNITED STATES SUPREME COURT mandated in:

ROSE v. LUNDY, 455 U.S.509, 102 S.Ct.1198,
71 L.Ed.2d 379(1982)

(Requiring complete exhaustion of all claims presented in a STATE PRISONER'S PROCEEDING FOR HABEAS CORPUS PRIOR TO A FEDERAL DISTRICT COURT'S CONSIDERATION OF THE PETITION).

ALSO AEE: LOWERY v. ESTELLE, 696 F.2d 333(1983)

"AN ABSENCE OF JURISDICTION IN THE CONVICTING COURT IS, AS (PETITIONER) CLAIMS, A BASIS FOR FEDERAL HABEAS CORPUS RELIEF COGNIZABLE UNDER THE DUE PROCESS CLAUSE."(14th AMEND.U.S.CONST.)

THEREFORE, the "SUMMARILY DISMISSED WITHOUT PREJUDICE" NO LONGER TO BE SEEN AS A VALID ORDER. Petitioner ask this HABEAS CORPUS COURT to issue the SHOW CAUSE ORDER pursuant to TITLE 28 USCS §2243 et seq. upon the respondent and ORDER THE CLERK/and DEPUTY CLERK(S) TO AFFIX THE SEAL OF THE COURT upon said ORDER, pursuant to TITLE 1 USCS §144; TITLE 28 USCS §1691.

Petitioner, LEIGH M. OLSEN, respectfully moves this Honorable Court to respect the **CASE LAW AUTHORITIES** cited hereinabove, and below, and issue the "**GREAT WRIT**" commanding the respondent to **RELEASE HIM FROM FALSE IMPRISONMENT FORTHWITH.**

LANDMARK BANK v. MACHERA
736 F.SUPP.375 (D.MASS.1990)

"THE COURT MUST ACCEPT (PETITIONER'S)
PROPERLY SUPPORTED ALLEGATION AS TRUE AND
RESOLVE ALL FACTUAL DISPUTE IN (PETITIONER'S)
FAVOR."

"(THIS COURT IS) REQUIRED, IN THE ABSENCE
OF CONVINCING EVIDENCE TO THE CONTRARY, TO
ACCEPT THESE ALLEGATION (WITHIN THE 4 CORNERS)
AS TRUE."

Petitioner is ENTITLED TO AN EVIDENTIARY HEARING
ON THE MERITS OF HIS HABEAS CORPUS CLAIMS. This Court
is BOUND TO OBEY the decisions from the U.S.SUPREME COURT
DECISION, MACHIBRODA v. UNITED STATES, 368 US 487, 7L.ed 2d
473, 82 S.Ct.510.

"NOT BY THE PLEADINGS AND AFFIDAVITS, BUT BY
THE WHOLE OF THE TESTIMONY, MUST IT BE DETERMINED
WHETHER THE PETITIONER HAS CARRIED HIS BURDEN OF
PROOF AND SHOWN HIS RIGHT TO A DISCHARGE."

"IF THE ALLEGATIONS ARE TRUE, THE PETITIONER
IS CLEARLY ENTITLED TO RELIEF"

"ACCORDINGLY, WE THINK THE FUNCTION OF 28 USC
§2254 CAN BE SERVE IN THIS CASE ONLY BY AFFORDING
THE HEARING WHICH ITS PROVISIONS REQUIRE."

OCT. 12, 2004

RESPECTFULLY SUBMITTED,


LEIGH M. OLSEN
Petitioner Pro Se
NCCI P.O.Box 466
Gardner, MA 01440

8.

ATTACHMENTS:

EXHIBIT A and EXHIBIT A-1 reflect a "PROCEDURAL ORDER"(a defacto) SHOW CAUSE ORDER pursuant to TITLE 28 USCS §2243 executed by JUDGE Nathaniel M. GORTON United States District Judge, previously assigned to this Central Section of the DISTRICT OF MASS.FEDERAL DISTRICT. However, the 'JUDICIAL PROCESSES' signed by the Hon. Judge N.M.Gorton, addressing prisoners' FEDERAL HABEAS CORPUS and FEDERAL CIVIL COMPLAINTS, were (in defacto) null and void, and in want/need of compliance with the FEDERAL STATUTORY LAWS TITLE 1,USCS §114 and TITLE 28 USCS §1691 (commanding):

"SEAL AND TESTE OF PROCESS;"

"ALL WRITS AND PROCESS ISSUING FROM A COURT OF THE UNITED STATES SHALL BE UNDER THE SEAL OF THE COURT AND SIGNED BY THE CLERK THEREOF." (emphasis added)

(NOTE: The Hon. Judge F.DENNIS SAYLOR IV's PROCESS was mailed/executed WITHOUT [ANY] PERFORMANCE BY the clerk of court or any deputy-clerk, rendering the Judge's Process VOID ON ITS FACE, VOID FROM ITS BEGINNING, dated "6th DAY OF OCTOBER, 2004".

4

the Commonwealth of Massachusetts, Attention: Pamela Hunt, Chief
 Appellate Division, One Ashburton Place, 18th Floor, Boston, MA
 02108; and it is further

ORDERED that the Respondents shall, within 20 days of receipt of this Order, file an answer (or other responsive pleading) to the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

Dated at Boston, Massachusetts, this 26th day of July, 2001.

REC. ON:
 AUG. 3, 2001

Nathaniel M. Gorton
 NATHANIEL M. GORTON
 UNITED STATES DISTRICT JUDGE

THIS "ORDER" IS VOID WHEN IT WAS
 EXECUTED WITHOUT THE "SEAL" ON IT.
 CLERKS' IGNORED STATUTORY LAW:

Exhibit
 A-1

United States District Court

28 USCS

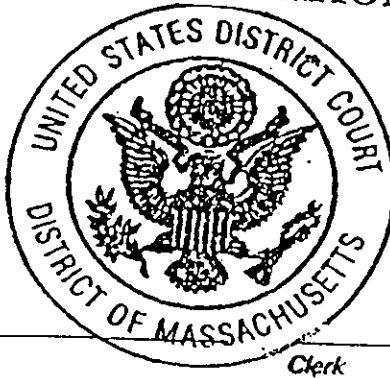
DISTRICT OF MASSACHUSETTS

[MANDATORY]

§ 1691. Seal and teste of process PROCESS

All writs and process issuing from a court of the United States shall be
under the seal of the court and signed by the clerk thereof.

AUTHENTICATION



Judicial
 Authentication
 only by

JUNE 18, 1992

Date

The Seal
 of the
 Court

ROBERT J. SMITH, JR.

Deputy Clerk
 (By) Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEIGH M. OLSEN,)
Petitioner,)
)
v.) C.A. No. 04-40178-FDS
)
STEVEN O'BRIEN, et al.,)
Respondents.)

MEMORANDUM AND ORDER

On September 3, 2004, petitioner submitted for filing a pro
se petition for writ of habeas corpus. For the reasons set forth
below, the petition is summarily dismissed without prejudice.

BACKGROUND

Petitioner, an inmate at NCCI Gardner, submitted for filing his self-prepared pleading titled "Petition for Writ of Habeas Corpus Ad Subjiciendum Against False Imprisonment in State Prison." See Petition. Petitioner seeks immediate release and brings his claims under the federal constitution and 28 U.S.C. §§ 2243, 2254. Id. The petition is accompanied by several exhibits including copies of various documents that were issued in petitioner's state criminal proceedings and more recent state civil proceedings. See Exhibits.

Petitioner alleges that on June 26, 1997, he was arrested by police after voluntarily appearing at a police station. See Petition, pp. 6, 7. Petitioner complains that his incarceration violates numerous state and federal statutes because (1) the warrants of commitment lacked the personal signature of a judge

*RECD (AO)
FRI 04
10/18/04
AM 2 PM 10/18/04
3*

and the wafer seal of the court; (2) he was placed in police custody despite the fact that he appeared voluntarily; (3) the police failed to lodge a valid criminal complaint; (4) the criminal complaint lacked the wafer seal of the court; (5) the indictments which charged him were not properly authenticated with the court's wafer seal; (6) the prosecutors delayed petitioner's trial; and (7) the trial court lacked competent jurisdiction to render judgment because the denial of a speedy trial should have led to the dismissal of the indictments. Id. at pp. 1-3, 6-7, 16-18.

DISCUSSION

I. Filing Fee

A party filing a habeas corpus petition must either (1) pay the \$5 filing fee for habeas corpus actions or (2) file an application to proceed without prepayment of fees. See 28 U.S.C. § 1914(a) (fees); § 1915 (proceedings in forma pauperis). Here, petitioner did pay the filing fee or file an application to waive the filing fee. Because the petition is subject to summary dismissal, see infra, ¶ II, petitioner will not be granted additional time to either pay the filing fee or file an application to waive the filing fee.

II. Habeas Petition

A. Standard of Review

Under Rule 4(b) of the Rules Governing Section 2254

Proceedings, the Court is required to examine a petition, and if it "plainly appears from the face of the motion. . . that the movant is not entitled to relief in the district court," the Court "shall make an order for its summary dismissal." Rule 4(b); McFarland v. Scott, 512 U.S. 849, 856 (1994) (habeas petition may be dismissed if it appears to be legally insufficient on its face). A petition for a writ of habeas corpus may also be summarily dismissed if it fails to set forth facts that give rise to a cause of action under federal law. 28 U.S.C. § 2243; Marmol v. Dubois, 885 F. Supp. 444, 446 (D. Mass. 1994).

Brevis disposition is appropriate if the petition and submitted materials make plain that the petitioner suffered no harm that is remediable under federal law. Mahoney v. Vondergritt, 938 F.2d 1490, 1494 (1st Cir. 1991), cert. denied, 502 U.S. 1104, 112 S. Ct. 1195, 117 L. Ed. 2d 436 (1992) (footnote omitted). The liberal concept of notice pleading has been rejected in the context of habeas corpus petitions, for the petition is expected to state facts that point to a "real possibility of constitutional error." Aubut v. State of Maine, 431 F. 2d 688, 689 (1st Cir. 1970), cited in Advisory Committee's Note to Rule 4, Rules Governing Habeas Corpus Cases, 28 U.S.C. § 2254 foll. (1976); Blackledge v. Allison, 431 U.S. 63, 75 n. 7, 97 S. Ct. 1621, 1629-30 n. 7, 52 L. Ed. 2d 136 (1977).

B. The Petition is Subject to Summary Dismissal

The instant petition fails to state any viable claims that petitioner is in custody in violation of the United States Constitution. Petitioner has failed to point to a particular constitutional provision that he contends is violated and provides no discussion of how the alleged facts might violate any federal constitutional right, as opposed to state law.¹ The facts alleged by petitioner are not sufficient to state a claim for violation of the federal constitution. See Mosley v. Moran, 798 F.2d 182, 185 (7th Cir. 1985) ("only violations of federal statutory or constitutional law can be the basis for granting federal habeas relief").

Petitioner alleges that the prosecutor intentionally delayed the petitioner's trial between June 26, 1997 and May 26, 1998. See Petition, p. 7. To the extent this allegation can be construed as a speedy trial claim,² petitioner has not alleged exhaustion of his state court remedies. An application for a writ of habeas corpus may not be granted unless the applicant has

¹Petitioner has no federal constitutional right to have state courts abide by state law. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (federal habeas relief unavailable for violations of state law or for alleged error in the interpretation or application of state law).

²The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...." U.S. Const. amend. VI.

exhausted the remedies available in the courts of the State. See 28 U.S.C. § 2254 (b) (1) (A). To meet this requirement, petitioner must demonstrate that he offered his federal claims to the state court in such a way "as to make it probable that a reasonable jurist would have been alerted to the existence of the federal question." See Adelson v. Dipaola, 131 F.3d 259, 262 (1st Cir. 1997) (quoting Scarpa v. DuBois, 38 F.3d, 1, 6 (1st Cir.1994)). Here, petitioner has not alleged that he has exhausted his available state remedies, and his petition is thus subject to dismissal. See Allicon v. Spencer, 29 F. Supp. 2d 45, 49 (D. Mass. 1998).

ORDER

For the foregoing reasons, it is hereby ORDERED

1. The petition for writ of habeas corpus is summarily dismissed without prejudice. See Rule 4, Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254.

SO ORDERED.

Dated at Worcester, Massachusetts, this 6th day of October, 2004.


 F. DENNIS SAYLOR IV
 UNITED STATES DISTRICT JUDGE